

# Annual Report of the Register of Copyrights

FISCAL YEAR ENDING SEPTEMBER 30, 2010

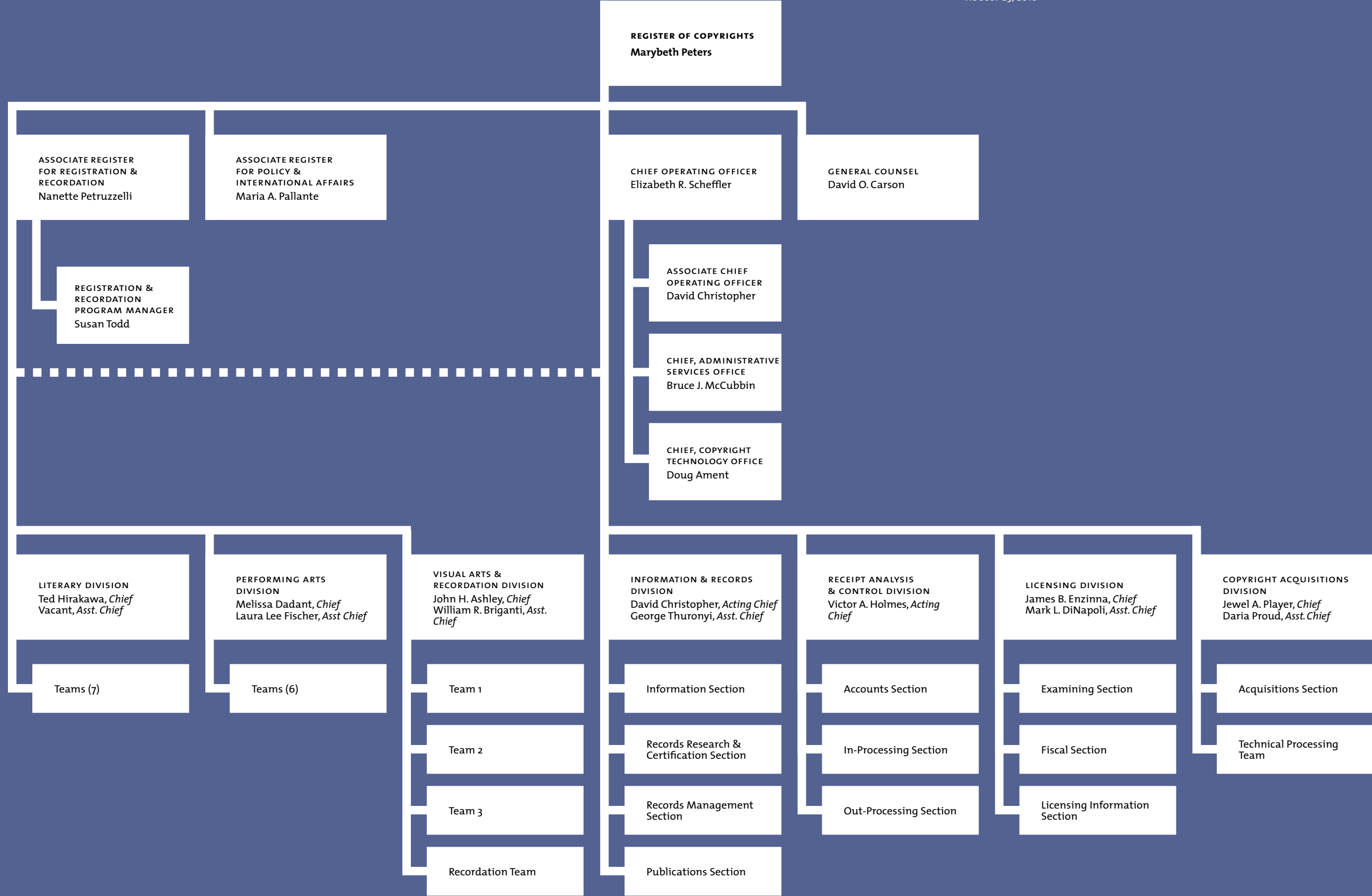
United States Copyright Office

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James Madison Building

Organization of the U.S. Copyright Office   INSIDE ►

# Organization of the U.S. Copyright Office

AUGUST 23, 2010



# Annual Report of the Register of Copyrights

FISCAL YEAR ENDING SEPTEMBER 30, 2010



United States Copyright Office



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# A message from the Register



*Register of Copyrights  
Marybeth Peters*

In fiscal 2010, the multiyear reengineering of the Copyright Office began to pay off, with delivery of registration services to the copyright community becoming quicker and more efficient. The temporary backlog that had materialized during the early days of reengineering began to dissipate thanks to the focused commitment of the Copyright Office staff and special assistance from staff throughout the Library of Congress during the first quarter of the fiscal year. This dedicated service as well as the hiring of 18 new registration specialists and a major software upgrade, had a significant positive impact on the Office's productivity. Registration claims in process decreased by more than 150,000.

At the same time, the public embraced the electronic system, and the number of claims submitted electronically reached 78 percent of all applications in the final quarter of the fiscal year. These trends bode well for our long-term goals of ensuring an effective national system of registration. Moving forward, the Copyright Office is well poised to refine and improve its important services, not only for the registration of copyright claims, but also for the recordation of licenses and other documents pertaining to copyright.

With respect to legal and policy work, the Copyright Office was busy, as always, both domestically and internationally. Primary areas of focus included working with Congress on the reauthorization of the statutory license for retransmission of television signals by satellite; continuing our efforts to create a full public performance right in sound recordings; working as members of the U.S. delegation to the World Intellectual Property Organization on issues related to a possible treaty for audiovisual performances and exceptions and licensing pilots to improve access for those with print disabilities; and working with the Department of Justice on the U.S. Statement of Interest in the proposed Google Books Search Settlement pending in the Second Circuit.

Finally, the Copyright Office's Information and Records Division, along with our technology group, continued work on the Records Digitization Project—a massive



effort to digitize some 70 million pre-1978 copyright records, many of which are unique originals that have no duplicate copy. By the last half of fiscal 2010, the Office had digitized 2.5 million assignment card records, 158,000 other records, and 53 volumes of the *Catalog of Copyright Entries* (a further 1.4 million claims records).

It has been a pleasure and a privilege to head the Copyright Office during this important year, and for the past 16 years. As I prepare to retire, I would like to thank everyone in the copyright community for your support and inspiration during my tenure.



Marybeth Peters

Register of Copyrights

## FACTS AT A GLANCE

*In fiscal 2010 the Copyright Office*

- Adjusted staffing assignments to accommodate the shift in workload away from paper processing, as more applicants file electronically.
- Upgraded its computerized registration system's underlying software to improve its structure and performance.
- Increased production levels, closing just over 682,000 claims and reducing the outstanding claims by more than 27 percent.
- Registered 636,527 claims; recorded 8,985 documents representing more than 294,000 works; transferred over 800,000 copies of works valued at \$32.9 million to the Library's national collection.
- Collected licensing royalties totaling more than \$274 million; distributed existing funds from the royalty pool totaling more than \$249 million.
- Accommodated 315,886 requests for reference services.
- Convened a large publishers' forum to broaden discussions relating to electronic deposit of serials with over 65 participants from 40 publishing organizations.
- Provided assistance to Congress on reauthorization of section 119 of the Copyright Act, the proposed Performance Rights Act, and the copyright implications of the proposed Google Book Search Settlement.
- Participated on U.S. delegations for international intellectual property and trade negotiations; cohosted a training with the World Intellectual Property Organization regarding exceptions for individuals who are visually impaired or blind.
- Assisted the Department of Justice in copyright-related litigation regarding complex issues, including the constitutionality of certain provisions of copyright law and interpretations of the Copyright Office's regulations and practices. Two of the cases on which the Office worked were decided by the U.S. Supreme Court.
- Issued legal determinations on the Copyright Royalty Judges' authority to issue subpoenas and on whether the Register of Copyrights and the Copyright Royalty Judges have the authority to determine the constitutionality of a provision of the copyright law.

# Executive summary



*Meeting of American Bar  
Association committee that  
tracks Copyright Office affairs*

## REGISTRATION AND RECORDATION

### Legislative and Legal

#### *Satellite Television Extension and Localism Act of 2010*

The office worked extensively with Congress and stakeholders on legislation that permits satellite carriers to retransmit distant broadcast signals to their subscribers in exchange for payment of statutory royalties. The Satellite Television Extension and Localism Act of 2010 (STELA), Pub. L. No. 111-175, signed into law on May 27, 2010, effective February 27, 2010, reauthorizes the section 119 statutory license for satellite carriers for an additional five years, amends the section 119 and section 111 statutory licenses to accommodate recent changes in broadcast technology, and revises the process by which licensees pay royalties. The Office has published a series of regulations implementing this law. The law also requires the Office to prepare a report on marketplace alternatives to statutory licensing and propose mechanisms by which the statutory licenses might be phased out. The report is due in August 2011.

#### *Performance Rights Act*

The Office continued its work on the proposed Performance Rights Act, which would extend the limited right of public performance in sound recordings to include public performances by traditional over-the-air broadcasters; specifically, the Office provided an analysis of a Government Accountability Office study, prepared at the request of Congress, on the impact of the proposed law on the music and broadcasting industries. The Office has supported the extension of such a right for decades, the absence of which is unique to the United States vis-à-vis other nations with established copyright laws. In 1995, a limited right to perform a sound recording publicly by means of a digital audio transmission was added, but traditional broadcasters remain free to transmit public performances of sound recordings over the air without the permission of copyright owners and without making any royalty payments. Legislation was

introduced in both the 110th and 111th Congresses to extend the performance right, but encountered strenuous objections from traditional broadcasters.

#### *Copyright Cleanup, Clarification, and Corrections Act of 2010*

The Copyright Office consulted closely with the Senate Judiciary Committee in developing this bill, which passed the Senate by the end of the fiscal year and was passed into law on December 9, 2010. The bill would make a number of small but important changes in the copyright law that affect the Copyright Office, authors and rights holders, and parties participating in Copyright Royalty Judges proceedings.

#### *Proposed Settlement of Authors Guild, Inc. v. Google, Inc.*

One of the most significant legislative and policy issues handled by the office during the year involved the copyright implications of the proposed Google Book Search Settlement. The Office's analysis addressed copyright concerns about the proposed Amended Settlement Agreement, including implications for longstanding policies and principles of copyright law.

### Studies

The Office worked on several comprehensive policy studies, two of which were requested by Congress. This included: (1) preparatory work to evaluate the benefits of bringing pre-1972 sound recordings under the protection of federal copyright law; and (2) research to evaluate market-based alternatives to statutory licensing for secondary transmissions of broadcast signals, as required by STELA, discussed above. The Office also supported two additional studies: the first, prepared by the Government Accountability Office, examined the effect of eliminating one of four elements of a standard for setting certain statutory license rates; the second, prepared by U.S. Customs and Border Protection (CBP), evaluated the feasibility of linking the CBP's intellectual property rights recordation system with existing intellectual property registries, including the Copyright Office's registration database.

## Litigation

The Copyright Office assisted the Department of Justice throughout the year with important court cases. Many of these cases were initiated in earlier fiscal years, in the same or lower courts, and some will continue into fiscal 2012. Some cases dealt with the constitutionality of various provisions of copyright law (for example, *Golan v. Holder*), others with interpretations of the Copyright Act (for example, *Costco v. Omega* and *Reed Elsevier v. Muchnick*) and still others with the Copyright Office's regulations and practices (for example, *Muench v. Houghton Mifflin*, which also involved interpretation of the Copyright Act).

## Triennial Anticircumvention Rulemaking

Section 1201(a)(1) of the copyright law prohibits the circumvention of technological measures that protect access to copyrighted works. The Digital Millennium Copyright Act (DMCA) of 1998 requires the Copyright Office to conduct a rulemaking every three years to determine whether the prohibition on circumvention of technological measures that protect access to works has affected or is likely to affect users adversely in their ability to make noninfringing uses of copyrighted works. As required by statute, the Copyright Office developed recommendations for exemptions to the anticircumvention provisions of the DMCA for consideration by the Librarian of Congress. The Librarian subsequently announced six exemptions for certain uses of DVDs, cell phone programs, eBooks, and other works.

## Legal Opinions on Copyright Royalty Judges' Decisions

The Copyright Royalty Judges are responsible for adjustment of the royalty rates for the various statutory licenses. However, when the Copyright Royalty Judges are faced with novel questions of law that arise during the course of a rate adjustment or distribution proceeding, they must refer such questions to the Register of Copyrights for a legal opinion. In fiscal 2010, the Copyright Royalty Judges twice referred questions to the Register: one determination considered the extent of the Copyright Royalty Judges' authority to issue subpoenas; the other considered whether the Register of Copyrights and the Copyright Royalty Judges have the authority to determine the constitutionality of a provision of the copyright law.

## Education and Outreach

The educational highlight of the fiscal year was a weeklong international copyright training program held in March. The program, hosted by the Copyright Office and the World Intellectual Property Organization (WIPO), brought delegates from 22 developing countries and countries in transition to Washington to discuss copyright issues pertaining to the blind and visually impaired.

The Copyright Office also sponsored or participated in numerous programs about its services and the law. The popular “Copyright Office Comes to...” meetings sponsored by the Office and the California Bar Association (Los Angeles and San Francisco), the New York State Bar Association (New York) and the First Amendment Center (Nashville) drew large crowds.

The Register of Copyrights made presentations in the United States and the United Kingdom and served as the keynote speaker at various symposia. She and other Copyright Office officials spoke at numerous law schools and annual law and trade association meetings. Senior policy and legal staff also delivered numerous presentations in the United States and abroad on topics ranging from exclusive rights and enforcement to exceptions and limitations.

## International

The Copyright Office continued to work on international copyright matters with executive-branch agencies such as the office of the U.S. Trade Representative; the Patent and Trademark Office and other agencies in the Department of Commerce; the State Department; and the Department of Justice by analyzing foreign copyright laws and providing expert advice on treaties and bilateral agreements relevant to copyright law.

The Copyright Office played a key role in developing and representing the U.S. position on proposed WIPO consideration of exceptions and limitations for the blind, visually impaired, and other reading disabled persons, including the development of text for a joint recommendation proposed by the United States. Copyright Office staff also played an important role in the progress of the multilateral negotiations for an Anti-Counterfeiting Trade Agreement.

## Budget

The Copyright Office receives two annual appropriations from Congress, one to cover general expenses of the Office, the other specific to the Licensing Division. The Copyright Office's total fiscal year budget authority for these two appropriations was \$53,973,000 with a staff ceiling of 469 full-time equivalents. The basic appropriation derives from two revenue sources: net appropriations from the U.S. Treasury in the amount of \$21,269,000 for fiscal 2010, as well as authority to spend user fees and prior year reserves in the amount of \$28,751,000. The Licensing Division was fully funded from user fees withdrawn from royalty pools in the amount of \$5,460,000. The Office also transferred 813,243 copies of registered and nonregistered works valued at nearly \$33 million (based on current format-specific average unit prices) to the Library of Congress for its collections. The Library would otherwise have purchased these works.

## For Further Information

Much of the work summarized in this report is further explained at [www.copyright.gov](http://www.copyright.gov).



# Service to government

PROVIDING TIMELY  
QUALITY SERVICE TO THE  
CONGRESS, THE EXECUTIVE  
BRANCH, AND THE COURTS  
TO ADDRESS CURRENT  
AND EMERGING ISSUES  
INVOLVING COPYRIGHT  
POLICY AND LAW.



*Participants in a weeklong  
international copyright training  
sponsored by the Office and WIPO.*

## REPORTS, HEARINGS, AND LEGISLATION

The Copyright Office provides testimony and nonpartisan assistance to Congress on copyright matters and proposed copyright legislation and undertakes studies and provides authoritative reports on current issues affecting copyright. The Register of Copyrights is frequently called upon to testify before Congress on substantive copyright issues as well as issues pertaining to the administration of the Copyright Office. In fiscal 2010, the Register presented written budget testimony in conjunction with the Librarian of Congress regarding the fiscal 2011 appropriations request.

### Satellite Television Extension and Localism Act of 2010

The office worked extensively with Congress and stakeholders on legislation that permits satellite carriers to retransmit distant broadcast signals to their subscribers in exchange for payment of statutory royalties. The Satellite Television Extension and Localism Act of 2010 (STELA), Pub. L. No. 111-175, signed into law on May 27, 2010, effective February 27, 2010, reauthorizes the section 119 statutory license for satellite carriers for an additional five years, amends the section 119 and section 111 statutory licenses to accommodate recent changes in broadcast technology, and revises the process by which licensees pay royalties. The Office has published a series of regulations implementing this law. The law also requires the Office to prepare a report on marketplace alternatives to statutory licensing and propose mechanisms by which the statutory licenses might be phased out. The report is due in August 2011.

## Copyright Cleanup, Clarifications, and Correction Act of 2010

The Copyright Office consulted closely with the Senate Judiciary Committee in developing this bill, which passed the Senate by the end of the fiscal year and was passed into law on December 9, 2010. The act makes a number of small but important changes in the Copyright Act that affect the Copyright Office, authors and rights holders, and parties participating in Copyright Royalty Judges proceedings. It eliminates the requirement that the Register of Copyrights maintain a directory of agents available to the public for inspection in both electronic and hard-copy formats, maintaining only the requirement that the directory be available through the Internet. It authorizes a sworn or official certification to be electronically submitted to the Copyright Office in connection with electronic submission of documents for recordation by the Office. The act also included several other minor technical amendments to title 17.

## *Proposed Settlement of Authors Guild, Inc. v. Google, Inc.*

The Google Book Search Settlement continued to be one of the most significant legislative and policy issues handled by the Office. The underlying lawsuits, filed by authors and publishers, were based on Google's systematic reproduction of millions of copyrighted books, in their entirety, without permission of the copyright owners, through scanning operations set up with large research libraries. Once scanned, the books were indexed electronically, allowing end-users to search by title and other bibliographic information. Google returned hits to its customers that included the option of browsing "snippets," except for public domain books, which could be viewed and downloaded in their entirety. As described in last year's annual report, the parties to the litigation reached a proposed class action settlement in 2008 that would have permitted Google not only to continue scanning and indexing, but also to make the full text of books available on the Internet for viewing and downloading, and to exploit the books in several other ways under a variety of circumstances. During fiscal 2010, the Office again took the lead in evaluating the proposed Amended Settlement Agreement and providing analysis for the Department of Justice on the copyright concerns for the Second Statement of Interest of the United States that was submitted to the court in February 2010.

## Performance Rights Act

Although the Copyright Act provides for an exclusive right of public performance for literary, musical, dramatic, and choreographic works; pantomimes; and motion pictures and other audiovisual works, it provides no such right for sound recordings. When sound recordings first became the subject matter of federal copyright law effective February 15, 1972, copyright owners of sound recordings were granted the exclusive rights of distribution and reproduction, but not public performance. In 1995, the law was amended to provide a limited right to perform sound recordings publicly “by means of a digital audio transmission.”

Early in the 111th Congress, legislation with the title the “Performance Rights Act of 2009” was introduced in both Houses of Congress (H.R. 848 and S. 379) to expand the public performance right of sound recording copyright owners to include analog audio transmissions (including broadcast transmissions, whether analog or digital). This change would, for the first time, require over-the-air radio stations to make royalty payments to recording artists. Both bills include accommodations to protect small, noncommercial, educational, and religious broadcasters. The only action on either bill in fiscal 2010 was that the Senate bill was reported out of the Judiciary Committee on October 15, 2009.

The Copyright Office, which has long been on record in favor of a full performance right in sound recordings, indicated its support for both bills. It also advised the Government Accountability Office in connection with an impact assessment on a public performance right for sound recordings.

## Innovative Design Protection and Piracy Prevention Act

Legislation to protect fashion designs as a form of intellectual property has been a slow but steady policy issue in recent years, and the Office continued to analyze the issues and provide technical information as appropriate. In August, Senator Schumer introduced the Innovative Design Protection and Piracy Prevention Act, which proposed three years of protection against copying for clothing, handbags, duffel bags, tote bags, belts, and eyeglass frames. Unlike previous versions of fashion design legislation, this bill would not provide for registration of fashion designs or have a role for the Copyright Office.

## Studies

### *Report on Market-Based Alternatives to Statutory Licensing*

The Satellite Television Extension and Localism Act of 2010 (STELA) instructed the Copyright Office, the Government Accountability Office, and the Federal Communications Commission to conduct studies and report findings to Congress on different structural and regulatory aspects of the broadcast signal carriage marketplace in the United States. With regard to the Office's responsibilities under the new law, section 302 of the STELA calls upon the Register of Copyrights to submit a report recommending how to implement a phase-out of the statutory licensing requirements set forth in sections 111, 119, and 122 of the Copyright Act.

The Office held several meetings with stakeholders to gather information about licensing broadcast programming in the marketplace and will publish a notice of inquiry and hold a roundtable discussion on the issues to collect additional information necessary to complete the report.

### *Study on Federal Copyright Protection of Pre-1972 Sound Recordings*

Until 1972, sound recordings were not among the works of authorship protected by the federal copyright statute; they enjoyed protection only under state law. On February 15, 1972, federal copyright protection was extended to sound recordings fixed on or after that date; however, sound recordings fixed prior to that date remained the subject of protection under state statutes and common law. In 2009, Congress asked the Copyright Office to study the “desirability and means” of bringing pre-1972 sound recordings under federal copyright protection and to examine the effect of federal coverage upon the public and rights holders. Congress specified that the study is to cover the effect of federal coverage on the preservation of such sound recordings, public access to those recordings, and the economic interests of rights holders. The study is also to examine the means for accomplishing such coverage.

### *Report on Linking of Intellectual Property Rights Databases*

Congress directed U.S. Customs and Border Protection (CBP) to prepare a report on the feasibility of linking the CBP Intellectual Property Rights Recordation system with the electronic registration systems operated by the Copyright Office and the Patent and Trademark Office. Such linking is the basis for the CBP to take action relating to imported and exported goods that violate the rights of copyright owners. The

report identifies three options for electronically linking the CBP's recordation system with the Copyright Office registration systems, each of which was deemed feasible given sufficient funds and resources. Copyright Office staff met with CBP staff to offer expertise on the copyright registration system and how it could interface with the CBP's recordation system. The Office also urged the CBP to consider a technical requirements assessment before recommending a specific option for implementation.

## INTERNATIONAL ACTIVITIES

The Register of Copyrights and other senior leaders in the Office regularly participate in conferences and symposia sponsored by the World Intellectual Property Organization in Geneva and in other WIPO-sponsored meetings throughout the world. The Copyright Office and WIPO also cosponsor training programs for private-sector and government officials from developing countries, as well as from other countries that are revisiting their laws or enforcement regimes.

Copyright Office experts routinely work with other U.S. government agencies to represent the United States in meetings on copyright and related subjects at WIPO.

Legal and policy experts at the Copyright Office also support the Office of the U.S. Trade Representative and other executive branch agencies by providing substantive copyright analysis to U.S. negotiators in multilateral trade and treaty deliberations. They also serve on official delegations and negotiating teams.

During fiscal 2010, Copyright Office senior staff served as key members of the U.S. delegations to meetings of the WIPO Standing Committee on Copyright and Related Rights (SCCR) in December 2009 and June 2010, the primary focus of which was exceptions and limitations, especially with respect to individuals who are blind, visually impaired, or who suffer from reading disabilities. The meetings also included discussion of protection of audiovisual performances and protection of broadcasting organizations.

The Office played a key role in developing and representing the U.S. position on proposed WIPO consideration of exceptions and limitations for individuals who are blind, visually impaired, or who are afflicted with other reading disabilities. On October 13, 2009, the Copyright Office and the Patent and Trademark Office (PTO) published a notice of inquiry seeking detailed commentary about the potential impact

on existing U.S. and international copyright law of a proposed treaty drafted under the auspices of the World Blind Union that was tabled during the May 2009 SCCR meeting. In response to the notice, the Office and the PTO received comments from a broad range of stakeholders and other interested parties. The Office helped compose the U.S. draft consensus instrument that the United States tabled at the June 2010 SCCR meeting.

Various members of the Office also participated as part of the U.S. delegation at other copyright-related meetings organized by WIPO, including the International Conference on Intellectual Property and Cultural Heritage in the Digital World in October 2009; the Fourth and Fifth Sessions of the Committee on Development and Intellectual Property in November 2009 and April 2010; the Fifteenth and Sixteenth Sessions of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore in December 2009 and May 2010; and the Open-Ended Consultations on Copyright Limitations and Exceptions for Persons with Print Disabilities and on the Protection of Audiovisual Performances in April 2010.

The Office also actively participated in numerous bilateral negotiations and consultations in support of the U.S. Trade Representative with countries around the world, including Brazil, Canada, China, Denmark, Germany, Hungary, Japan, Kazakhstan, Philippines, Poland, Russia, Singapore, Spain, Switzerland, Thailand, Turkey, Ukraine, and Yemen. The Office provided assistance with regard to the World Trade Organization (WTO) accession processes of a number of nations, including Kazakhstan, Laos, and Yemen, and participated in numerous WTO trade policy reviews for countries around the world, including Albania, Armenia, Benin, Bosnia, Burkina Faso, Chile, China, Chinese Taipei, Croatia, El Salvador, The Gambia, Georgia, Honduras, Malawi, Maldives, Mali, Niger, Senegal, Serbia, and the Southern African Customs Union. The Office also assisted with the WTO trade policy review of the United States.

Copyright Office staff again served on the interagency Special 301 Committee, which evaluates the adequacy and effectiveness of intellectual property protection and enforcement throughout the world. The annual Special 301 process, established under U.S. trade law, is one of the tools used by the U.S. government to improve global protection for U.S. authors, inventors, and other holders of intellectual property rights.

In addition to the scheduled Special 301 process, the Office assisted in out-of-cycle reviews of Fiji, Israel, Philippines, Poland, Saudi Arabia, and Thailand.

The Office continued to assist the U.S. Trade Representative in connection with the preparation and negotiation of an Anti-Counterfeiting Trade Agreement (ACTA) under discussion with Australia, Canada, the European Union and its member states, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, and Switzerland. During fiscal 2010, the Office was represented in U.S. delegations to ACTA rounds in Seoul, Korea; Guadalajara, Mexico; Wellington, New Zealand; Lucerne, Switzerland; Washington, DC; and Tokyo, Japan. Copyright Office staff chaired discussions of copyright experts during the Washington and Tokyo rounds.

The Office took part in the U.S. delegations to many other international meetings, including meetings with China's Ministry of Culture to discuss its *Circular on Online Music* and with the National Copyright Administration of China and China's Ministry of Foreign Affairs and Commerce to discuss and plan future exchanges and seminars on copyright in Beijing in December 2009; the Joint Commission on Commerce and Trade Intellectual Property Rights Working Group in Beijing in April 2010; a breakout session regarding current copyright issues at a meeting hosted by the Trans-Atlantic Consumer Dialogue in Washington, D.C., in April 2010; the United States–European Union Intellectual Property Rights Working Group and informal bilateral talks between the United States and the European Union in Brussels in June 2010; the 24th session of the UNESCO Intergovernmental Copyright Committee in Paris in June 2010; the second round of negotiations regarding the proposed Trans-Pacific Partnership trade agreement in San Francisco in June 2010; and bilateral consultations on intellectual property rights issues in Madrid and Moscow in July 2010.

Beyond the Office's WIPO and interagency work, the Register spoke throughout the fiscal year at numerous international meetings and conferences, including the Second Global Symposium of Intellectual Property Authorities in Geneva, the Seventh International Publishers Association Copyright Symposium in Abu Dhabi, and the Itech Law 2010 Annual Meeting and World Conference.



## LITIGATION

Although the Copyright Office is not an enforcement agency, the Office may become involved in litigation by (1) choosing to intervene under section 411(a) of the copyright law in a copyright infringement case where registration has been refused; (2) assisting in the preparation of an amicus brief in support of a particular position; (3) assisting the Department of Justice in defending the constitutionality of a provision of the Copyright Act; (4) asking the Department of Justice to bring a suit under section 407 of the copyright law to compel the deposit of copies of the best edition of a copyrighted work published in the United States; or (5) being sued under the Administrative Procedure Act.

The Copyright Office assisted the Department of Justice throughout the year with important court cases. Many of these cases were initiated in earlier fiscal years, in the same or lower courts, and some will continue into fiscal 2012. Some cases dealt with the constitutionality of various provisions of copyright law. For example, *Golan v. Holder* addressed the constitutionality of “restoration” of certain foreign copyrights under section 104A of the copyright law. Other cases addressed interpretations of the Copyright Act. For example, in *Reed Elsevier v. Muchnick*, the Supreme Court held that section 411(a), which requires registration of a copyright or refusal of registration by the Copyright Office as a prerequisite to a suit for copyright infringement, does not affect the jurisdiction of courts to hear a case of copyright infringement. In *Costco Wholesale Corp. v. Omega S.A.*, the court heard argument on whether the first sale doctrine applies to copies of works made outside the United States, the importation of which is an act of infringement. In *Muench v. Houghton Mifflin Harcourt Publ. Co.* and *Bean v. Houghton Mifflin Harcourt Publ. Co.*, the district courts concluded that Copyright Office practices with respect to group registration of photographic databases did not comply with the requirements of section 409. In *United States v. ASCAP*, the court of appeals concluded that downloading of a phonorecord of a musical work did not constitute a “public performance” of that work.

*A digest of the most important cases is included in the appendix.*

## LEGAL OPINIONS

Adjustment of the royalty rates for the various statutory licenses is the responsibility of the Copyright Royalty Judges. Pursuant to section 802(f)(1)(A)(ii) of the copyright law, the judges may refer questions of substantive law to the Register when faced with novel questions of law during the course of their proceedings.

In fiscal 2010, the judges twice referred questions to the Register, and the Office prepared and published the Register's determinations in both instances within the time frame prescribed by law.

### *Authority of Copyright Royalty Judges to Issue Subpoenas*

The first material question of substantive law raised whether the Copyright Royalty Judges have authority under the Copyright Act to subpoena a nonparticipant to appear and give testimony or to produce and permit inspection of documents or tangible things.

After a thorough review of the relevant statutory provisions, legislative history, case law, and briefs filed by interested third parties, the Register, in consultation with the Office of the General Counsel, concluded that the Copyright Royalty Judges do have the authority to subpoena a witness to appear and give testimony or to produce and permit inspection of documents or tangible things even when that witness is not a participant in the proceeding and his or her testimony has not yet been submitted in the proceeding.

### *Authority of Register and the Copyright Royalty Judges to Determine Constitutionality of Section 114(f)(5)*

The second request for guidance posed two questions pertaining to whether the Register has the authority to determine the constitutionality of certain provisions of the Copyright Act.

The Register, in consultation with the Office of the General Counsel, concluded that since neither the Register nor the Copyright Royalty Judges have any specific authority under the Copyright Act to determine the constitutionality of various provisions of that act, and because no other established exceptions to the general rule

against agency adjudication of the constitutionality of congressional enactments are applicable, neither the Register nor the judges have such authority.

## COPYRIGHT OFFICE REGULATIONS

The Register of Copyrights is authorized to establish regulations for the administration of the copyright law. In addition to regulatory activities discussed elsewhere in this report, regulatory action during fiscal 2010 included the following.

### *Triennial Anticircumvention Rulemaking*

Section 1201(a)(1) of the copyright law, enacted as part of the Digital Millennium Copyright Act of 1998, prohibits the circumvention of technological measures that protect access to copyrighted works. It also requires the Copyright Office to conduct a rulemaking every three years to determine whether the prohibition on circumvention of technological measures that control access to works has had, or is likely to have, an adverse effect on users' ability to make noninfringing uses of copyrighted works.

After consulting with other federal agencies as required by statute, the Register presents her recommendations for exceptions to the anticircumvention rule to the Librarian of Congress.

The Copyright Office initiated the latest triennial rulemaking proceeding in October 2008. The Office received 19 written comments and 56 responsive comments, and heard four days of testimony from public hearings held in Washington, D.C., and Palo Alto, California. The Register presented five recommendations for specific exemptions to the Librarian in June pertaining to (1) motion pictures on DVDs where short portions are used in new works for the purpose of criticism or comment; (2) computer programs that enable wireless telephone handsets to execute software applications; (3) computer firmware or software that enables used wireless telephone handsets to connect to a wireless telecommunications network; (4) videogames accessible on personal computers to perform testing, investigating, or correcting of security flaws or vulnerabilities, (5) computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete.

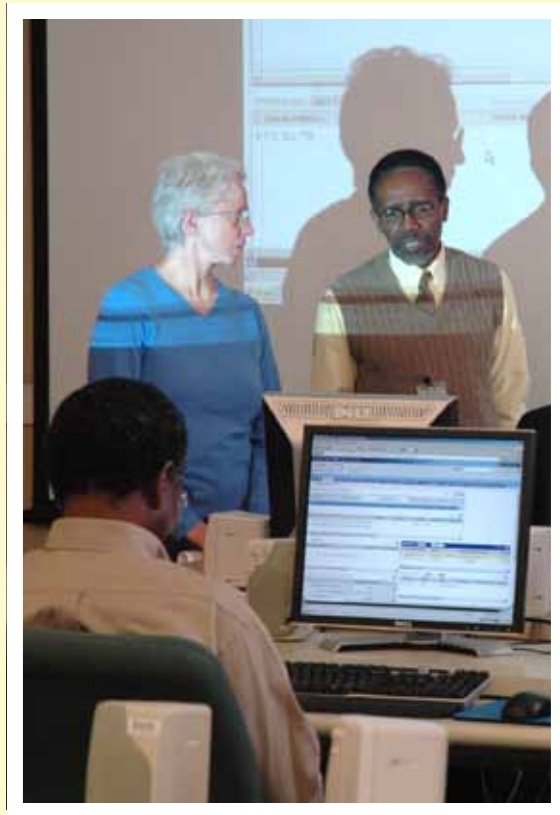
The Librarian agreed with the Register's recommendations and added a sixth exemption pertaining to electronic books. The Librarian published his determination of exemptions to the anticircumvention rule on July 27, 2010.

#### *Mandatory Deposit for Online-Only Works*

In January, the Copyright Office issued an interim regulation regarding the mandatory deposit of works under section 407 of the copyright law that exist only in an electronic format. The regulation exempts such works from the mandatory deposit provision unless they are expressly demanded by the Copyright Office. Although there are many types of works published only online, the Copyright Office currently intends to demand only certain electronic serials; other categories of online-only works may be added by subsequent regulatory changes pursuant to the Library's collection needs.

# Public services

**PROMOTING APPROPRIATE PROTECTION AND USE OF COPYRIGHTED WORKS, MASK WORKS, AND VESSEL HULL DESIGNS BY PROVIDING TIMELY EASY-TO-USE PUBLIC SERVICES.**



*Special projects training  
to reduce number of  
claims in process*

The copyright law is embodied in title 17 of the *United States Code*. The Copyright Office administers its provisions for the benefit of owners and users of copyrighted works, mask works, and vessel hull designs. Regulations governing copyright law administration are in chapter 37 of the *Code of Federal Regulations*.

## THE REENGINEERED COPYRIGHT OFFICE

The Copyright Office continually aims to improve the quality and timeliness of services to its customers. The Office's multiyear effort to reengineer its business processes and the delivery of its principal public services was intended to keep the Office ahead of anticipated advances in technology and customer needs. In fiscal 2010—the third fiscal year completed entirely after the new processes were implemented—the Office focused on hiring and training additional staff, making significant improvements to its online registration system, drastically reducing the number of claims in process, and launching a project to reengineer the Office's licensing administration activities.

### Information Technology

Ensuring a strong information technology platform is and will continue to be essential to the Copyright Office's success in providing services in the 21st century. The Office's technological infrastructure and platform provide online registration capability and support for processing both electronic and hard-copy registrations. The Office's online search capability makes more than 21 million indexed copyright records fully searchable and available online.

Throughout fiscal 2010, the Office improved its core information technology systems, including a significant upgrade and architecture redesign of its principal system, eCO, which supports the majority of Copyright Office business processes,

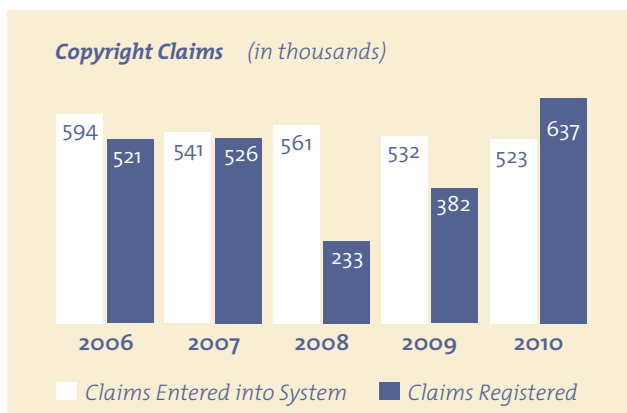
including the registration system. The Office made over 57 improvements to the eCO system, including the implementation of new data storage systems, critical backup systems, and new printing capabilities to enhance the speed with which the Office can issue registration certificates.

In the fourth quarter of fiscal 2010, electronically filed claims accounted for 78 percent of filings.

## REGISTRATION

### Copyrighted Works

The Office examines creative works of authorship to determine whether there is copyrightable subject matter and whether the claimant has complied with applicable



copyright law and regulations. At the beginning of fiscal 2010, the Office had approximately 540,000 claims on hand; it received an additional 522,796 claims throughout the year. The Office closed 682,148 claims during the year, exceeding the number of claims received by approximately 159,000, representing significant strides toward eliminating a backlog of claims that had developed during the initial months of reengineering implementation. The

Office also made substantial progress in closing claims that had been pending for more than a year. At the end of fiscal 2010, the Office had approximately 380,000 claims on hand at various stages of its workflow, of which approximately 93,000 required additional information from the applicant before the Office could complete its examination.

### *Refusals to Register*

The Copyright Office is required to refuse to register a claim to copyright when it determines that the material submitted does not constitute copyrightable subject matter or for other legal or procedural reasons. In fiscal 2010 it rejected 45,621 claims.

### *Appeals*

Applicants whose claims for registration are rejected may seek reconsideration twice. The first appeal is reviewed by senior staff in the Office's Registration and Recordation Program. If the refusal is upheld, the claimant may bring a request for second reconsideration to the Copyright Office Review Board, comprised of the Register of Copyrights, the General Counsel, and the Associate Register for Registration and Recordation, or their designees.

### *First Reconsideration*

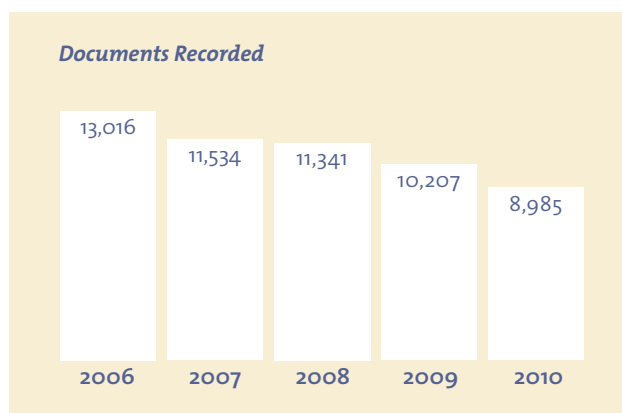
During fiscal 2010, the Office received 351 requests for first reconsideration, representing 735 works. The Office sustained rejections for 462 of these works; 273 decisions were reversed and the claims approved. At year end, 58 requests for first reconsideration representing 97 works, were pending and awaiting review.

### *Second Reconsideration*

During fiscal 2010, the Copyright Office Review Board considered and issued decisions for second requests involving 36 works, of which the board upheld the rejection of 31 and reversed 5.

## RECORDATION

The Copyright Office records transfers of rights and other documents pertaining to copyrights (for example, security interests), pursuant to section 205 of the Copyright Act. The resulting





record assists potential licensees and others to determine copyright ownership and prioritizes claims in the event of a conflict.

During fiscal 2010, the Office recorded 8,985 documents relating to more than 294,000 works.

## RECORDS PROJECT

Initiated in 2008, the Copyright Records Digitization Project is currently scanning the Office's entire historical catalog of physical records of copyright registrations, assignments of copyrights, and other records in an effort to enhance the Office's existing online database of copyright registration information. Although the Office's current records dating back to 1978 are already online and fully searchable, about 70 million pre-1978 copyright records exist only in paper form and microfilm. These records serve as valuable documentation for owners and users of intellectual property and are an irreplaceable piece of cultural history, providing a timeline of the nation's creativity.

During fiscal 2010, the Office worked with contractors and other Library units to scan 2.5 million copyright catalog cards, including indices to all copyright transfers and assignments from 1870 to 1977; 53 volumes of the *Catalog of Copyright Entries* containing 1.4 million registration records, which were made available through the Internet Archive website, as well as 158,000 assignor, pseudonym, periodical, and prints and label catalog cards. The Copyright Office collaborated with the Library's Office of Strategic Initiatives to develop a prototype data capture tool to begin the indexing of scanned catalog cards.

## ONLINE SERVICE PROVIDER DESIGNATIONS OF AGENTS

In 1998, Congress amended the law to limit potential liability of service providers for monetary and injunctive relief for copyright infringement for certain activities carried out on their systems or networks. To take advantage of this limitation on liability, service providers must file designation-of-agent statements identifying agents

to receive notifications of claims of infringement and also post such information on their publicly accessible websites. The Office processes these online service provider designations of agents and makes them available to the public on its website. During the year, the Office posted 1,431 designations of agents on the directory. The total available at the end of the fiscal year was more than 12,400.

## STATUTORY LICENSES

Some statutory licenses require that licensees deposit royalty funds with the Copyright Office. Statutory licenses were included in the Copyright Act of 1976, as amended. The Office's Licensing Division is responsible for collecting royalty fees from cable operators, satellite carriers, and importers and manufacturers of digital audio recording devices and media, the revenues from which are invested in interest-bearing securities with the U.S. Treasury. The funds, less reasonable operating costs, are distributed to copyright owners in accordance with the copyright law. The Licensing Division also handles other matters relating to the administration of the Copyright Act's statutory licenses.

Since 2005, royalty rates, terms, and conditions of most statutory licenses, as well as distribution determinations, have been made by the Copyright Royalty Judges, an independent and separate unit of the Library under the aegis of the Librarian of Congress.

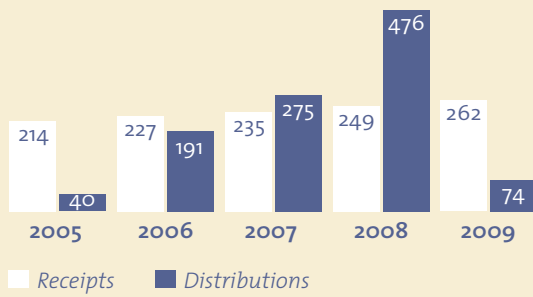
During fiscal 2010, the Licensing Division collected more than \$274 million in royalty payments.

### Royalty Fee Distributions

The Copyright Office distributes royalties collected under sections 111, 119, and chapter 10 of the copyright law, as determined by agreements among claimants or by proceedings of the Copyright Royalty Board. In fiscal 2010, the Office made several royalty distributions totaling more than \$249 million.

Financial statements for royalty fees are compiled and audited on a calendar-year basis as required by law. The total royalty receipts and distributions shown in calendar-year statements are therefore not the same as the fiscal year total. Calendar year 2009

**Royalty Receipts and Distributions**  
(in millions; by calendar year)



financial statements are included in the appendices to this report. Calendar year 2010 financial statement figures will appear in the fiscal 2011 report.



# Acquisition of copyrighted works

**SUPPORTING LIBRARY OF  
CONGRESS SERVICE TO  
CONGRESS AND THE AMERICAN  
PEOPLE BY PROVIDING TIMELY  
ACQUISITION OF COPYRIGHTED  
WORKS REQUIRED BY THE  
LIBRARY.**

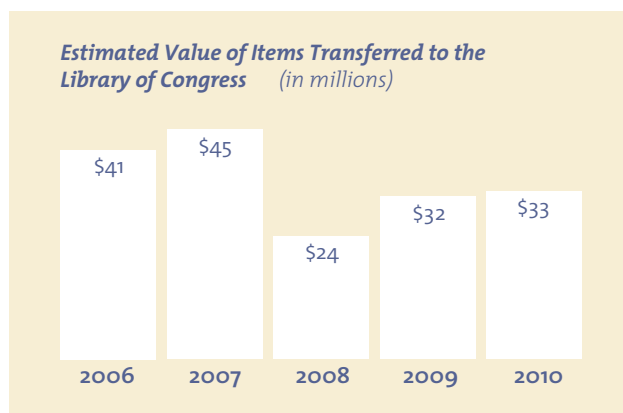


*Copyright deposits*

## CONTRIBUTIONS TO LIBRARY OF CONGRESS COLLECTIONS

Copies of works submitted for registration or to fulfill the mandatory deposit provision of the law are made available for the Library of Congress to select for the national collection. Copyright deposits form the core of the Library’s “Americana” collections and serve as the primary record of American creativity.

In fiscal 2010, the Office transferred 814,243 copies of registered and nonregistered works valued at close to \$33 million (based on current format-specific average unit prices) to the Library of Congress for its collections. The Library would otherwise have purchased these works.



## MANDATORY DEPOSIT

The mandatory deposit provision in section 407 of the copyright law generally requires that the copyright owner, or the owner of the exclusive right of publication, deposit two copies of works published in the United States within three months of publication. The Library may add these works to the national collection, or it may use them in its exchange program with other libraries.

The Office encourages copyright owners to deposit or register works regularly and voluntarily within three months after publication; however, the copyright law authorizes the Register to issue demands for mandatory deposit copies any time after publication.

The Office made demands for 4,195 titles based on recommendations by Library of Congress librarians and recommending officers and on congressional requests. The Office received 3,582 titles from publishers in response to these demands. The Office also completed reviews of the publication catalogs of 24 publishers for compliance with mandatory deposit provisions of the copyright law.

Approximately 40 percent of the copies of works the Office transferred to the Library of Congress for its use arrived under the mandatory deposit provisions of the copyright law (324,297 out of 814,243 copies). The value of these works approached \$9 million in addition to the estimated \$24 million value of materials transferred to the Library through the copyright registration system.

### **Mandatory Deposit of Electronic-Only Material**

In February, the Office promulgated an interim regulation governing mandatory deposit of works published only online. The regulation, currently limited to “born digital” serials, permits the office to demand deposit of copies of works that are produced only in electronic form and published online.

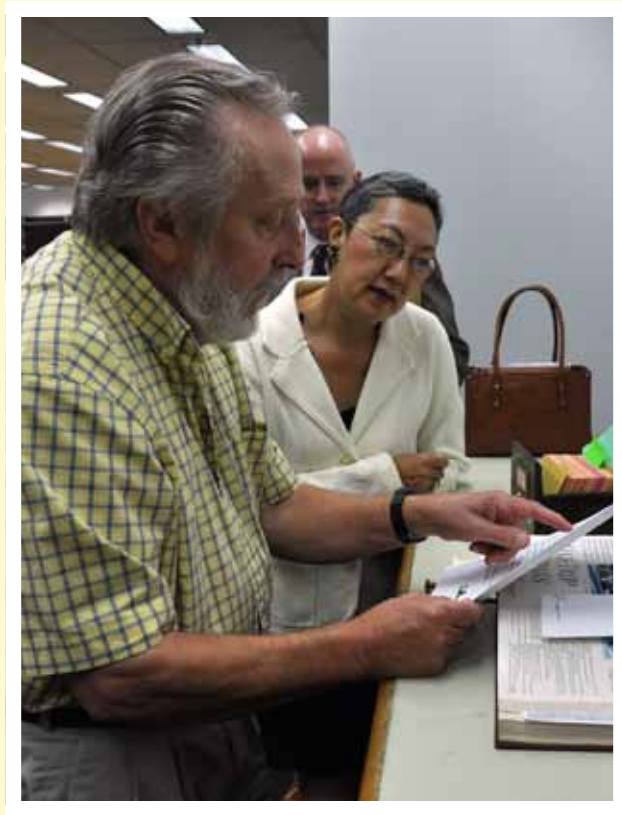
The project was initiated under the Librarian’s management agenda and includes representation from throughout the Library. The Office met with publishers and experts who deliver electronic periodicals, holding meetings in December 2009 and attending the annual meeting of the Professional and Scholarly Publishers Division of the American Publisher’s Association. Within a month of the interim regulation’s effective date, the Office participated in an e-Journals Summit sponsored by the National Academy of Science. In May, the Office organized a large publishers’ forum to continue to broaden the discussions originally started in December, with over 65 participants representing 40 of the 100 publishing organizations that were invited. In September 2010, the office issued 11 demands for 40 online-only serials, receiving its first electronic deposit on September 30.





# Information and education

IMPROVING PUBLIC  
UNDERSTANDING OF  
COPYRIGHT AND RELATED  
LAWS, PRINCIPLES, AND  
SERVICES.



*Copyright Office staff leading  
a tour of the card catalog.*

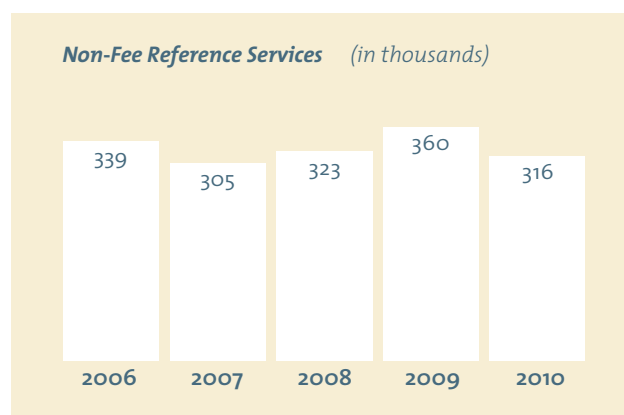
The Copyright Office, as the agency that administers the copyright law, disseminates information on the copyright law and copyright services, provides copyright education to the public, and responds to information requests.

## PUBLIC INFORMATION

In fiscal 2010, the Office accommodated a total of 315,886 requests from the public for direct reference services, and assisted more than 11,000 public visitors.

As part of its commitment to customer service, the Office conducted formal surveys of patrons and Copyright Office staff to establish a baseline customer satisfaction index and to develop recommendations for improving customer service in the Information Section and the Records Research and Certification Section of the Information and Records Division.

The Office distributed 20 issues of *NewsNet*, an electronic news service covering legislative developments, licensing news, and general Copyright Office news, to more than 20,000 subscribers during the fiscal year. The Office also provided support to the electronic publication of 20 issues of the Copyright Royalty Board's *CRB News*.



## COPYRIGHT OFFICE WEBSITE

The Copyright Office website plays an integral role in fulfilling the Office's strategic goal to improve public understanding of copyright law and to support the Library of Congress's strategic goals focusing on content, customers, and outreach. Through the *copyright.gov* website, members of the public and the copyright communities learn about copyright law, registration of copyright claims, and records of copyright registrations and recorded documents. The website also serves as the portal to the Office's electronic filing system through which users can register claims and upload copies of their works. Compared with fiscal 2009, use of the website in fiscal 2010 was relatively steady with approximately 5.25 million visits and just over 24 million page views throughout the year.

## OUTREACH

The Copyright Office also sponsored or participated in numerous programs about its services and the law. The popular "Copyright Office Comes to..." meetings sponsored by the Office and the California Bar Association (Los Angeles and San Francisco), the New York State Bar Association (New York) and the First Amendment Center (Nashville) drew large crowds.

The Register of Copyrights made presentations in the United States and the United Kingdom and served as the keynote speaker at various symposia. She and other Copyright Office officials spoke at numerous law schools and annual law and trade association meetings. Senior policy and legal staff also delivered numerous presentations in the United States and abroad on topics ranging from exclusive rights and enforcement to exceptions and limitations.

The Office's policy and legal staff also delivered numerous other presentations in the United States and abroad. The Office prepared and gave presentations about copyright law and policy to U.S. and international visitors throughout fiscal 2010, including representatives from Argentina, Chile, China, Egypt, Germany, Georgia, Mexico, Nigeria, Peru, Russia, South Korea, Spain, Taiwan, and Thailand, and a group of intellectual property representatives from various Latin American countries.

The Office, along with the World Intellectual Property Organization, also hosted a weeklong international copyright training program held in March. The program brought delegates from 22 developing countries and countries in transition to Washington to discuss copyright issues pertaining to individuals with visual impairments.

## FREEDOM OF INFORMATION ACT (FOIA)

The Office received and responded to 42 requests under the Freedom of Information Act, 5 U.S.C. § 552, during the fiscal year.

Respectfully submitted to the Librarian of Congress by

MARYBETH PETERS

*Register of Copyrights and  
Associate Librarian of Congress for Copyright Services*

# Appendices & tables



*Backlog reduction  
efforts a success*

## TESTIMONY TO CONGRESS

- Before the Subcommittee on the Legislative Branch, House Appropriations Committee on April 21, 2010, regarding the fiscal 2011 budget.

## LITIGATION

- *Costco Wholesale v. Omega*, 541 F.3d 982 (9th Cir. 2008), pertaining to the nexus of the first sale doctrine, section 109 of title 17, and the exclusive right to import copies of works acquired outside the United States, section 601(a). The Office assisted the Solicitor General in preparing a brief urging the Supreme Court not to take the case; however, in April 2010 the Court granted the petition. The Office subsequently assisted the Solicitor General in preparing an amicus brief on the merits, urging affirmation of the lower court's decision that the first sale doctrine did not apply to copies made outside of the United States.
- *Reed Elsevier, Inc. v. Muchnick*, 130 S.Ct. 1237 (2010), pertaining to the registration requirement as a precondition of suit, section 411(a) of title 17, and whether that requirement is jurisdictional. The Office worked with the Solicitor General on a brief submitted to the Supreme Court, arguing that although section 411(a) is not jurisdictional, the registration requirement serves important public interests beyond those of the parties to an infringement suit, safeguarding the source of a significant portion of the Library of Congress's acquisitions, helping to ensure that the Copyright Office maintains a public record of copyrighted works, and giving courts the benefit of the Register's expertise on issues of registrability and narrowing the issues that must be litigated.

The brief suggested that even when defendants do not raise the failure to comply with section 411(a), district courts typically should enforce that requirement *sua sponte*, and should decline to adjudicate an infringement suit on the merits when the plaintiff has not complied with the statutory prerequisite. Finally, the brief took issue with the position taken by some courts that section 411(a)'s requirement of registration as a precondition to suit is satisfied once an application for registration has been submitted to the Copyright Office. On March 2, 2010, the Court ruled, holding that section 411(a) is not jurisdictional and declining to address any other issues.

- *Authors Guild, Inc. et al. v. Google, Inc.*, Civil No. 05-8136 (S.D.N.Y., filed Sept. 20, 2005), proposed settlement of a private infringement suit brought against Google by a class of publishers and authors. The proposed settlement raised significant questions of copyright policy; the Office worked extensively with the Department of Justice and the Office of the U.S. Attorney for the Southern District of New York to prepare a Statement of Interest on behalf of the U.S. government. The statement was filed on September 18, 2009. Due to overwhelming opposition, the parties renegotiated their settlement and proposed a revised version to the court on November 13, 2009. The Office again worked extensively with the Justice Department and the U.S. Attorney's Office to prepare a second Statement of Interest, filed with the court on February 4, 2010.
- *Golan v. Holder*, 609 F.3d 1076 (10th Cir. 2010), a challenge to the constitutionality of section 104A of title 17, an amendment to the copyright law enacted as part of the Uruguay Round Agreements Act that had removed certain foreign works from the public domain. The Copyright Office assisted the Department of Justice in defending the constitutionality of this "restoration" provision. After a remand from the U.S. Court of Appeals for the Tenth Circuit, the district court had ruled in 2009 that section 104A was unconstitutional. The Office assisted the Department of Justice in preparing for argument of a second appeal, and on June 21, 2010, the court of appeals ruled that section 104A is constitutional.
- *Bean v. Houghton Mifflin Harcourt Publishing*, 2010 U.S. Dist. LEXIS 83676; 97 U.S.P.Q. 2d 1983 (D. Ariz. Aug. 10, 2010), pertaining to the registration of automated

databases comprised primarily of photographs and Copyright Office practices relating to the information required—for example, titles of works and names of individual photographers—to effect registration. On August 10, 2010, the United States District Court for the District of Arizona issued an order refusing to recognize that a collective work registration covers the underlying works unless each of those underlying works are identified by author and title, among other things. The court’s reasoning is inconsistent with the Copyright Office’s long-standing interpretation of the statutory flexibility afforded to the Register of Copyrights for providing registration accommodations for groups of related works and the Office’s existing practices. *Bean* is appealing the decision to the Ninth Circuit Court of Appeals. The Office will assist the Department of Justice in introducing the government’s views in an amicus brief in the pending appeal.

- *Muench Photography, Inc. v. Houghton Mifflin Harcourt Publishing Co.*, 712 F. Supp. 2d 84 (S.D.N.Y. 2010), same general facts and ruling as in *Bean v. Houghton Mifflin*, discussed above, but has not yet advanced to the appellate stage.
- *U.S. v. ASCAP*, 627 F.3d 64 (2d Cir. 2010), whether the downloading of a digital music file embodying a particular song constitutes a “public performance” of that song within the meaning of the Copyright Act. The Copyright Office assisted the Department of Justice in preparing an amicus brief to the U.S. Court of Appeals for the Second Circuit arguing that a download of a recorded performance of a musical work that is not contemporaneously perceived by the recipient does not constitute a public performance of the musical work. On September 28, 2010, the court issued its opinion agreeing with the position taken in the amicus brief of the United States.
- *MGE UPS Systems v. GE Consumer & Industrial, Inc.*, 622 F.3d 361 (5th Cir. 2010), *aff’d*, 612 F.3d 760 (5th Cir. 2010), whether an independent contractor violated the anticircumvention provisions of the Digital Millennium Copyright Act (section 1201 of title 17) when it developed a mechanism to service industrial equipment without the copyrighted software that is typically required to enable certain service and support functions on the equipment. In its initial ruling, the Fifth Circuit held that section 1201 does not apply to the circumvention of an access control when such circumvention does not infringe a copyright. At the urging and with the assistance



of the Copyright Office, the Department of Justice submitted an amicus brief urging the court to repudiate that reasoning and decide the case on an independent ground also relied upon by the court in its initial decision.

On rehearing, the court took the approach recommended by the Department of Justice.

- *Capitol Records v. Thomas-Rasset*, Civil No. 06-1497 (D. Minn. Jan. 22, 2010) and *Sony BMG Music Entertainment v. Tenenbaum*, 721 F. Supp. 2d 85 (D. Mass. 2010), brought by record companies against individuals who engaged in unauthorized downloading of sound recordings and made those recordings available to others in peer-to-peer file-sharing networks. The cases raise issues of the constitutionality of awards of statutory damage. Tenenbaum went to trial in 2009, and the jury returned a verdict of \$675,000 in statutory damages—\$22,500 for each of the 30 songs for which the jury found plaintiff had willfully infringed a copyright. The Copyright Office assisted the Department of Justice in the preparation of a post-trial brief opposing the defendant’s motion to set aside the verdict as unconstitutionally excessive, arguing that the court should not address the constitutional issue without first determining whether reduction of the verdict was required under the common law remittitur doctrine and that the application of statutory damages was constitutional. In July 2010, the district court held that the verdict was excessive, in violation of the due process clause. The court reduced the award to \$2,250 per infringed work, three times the statutory minimum, for a total award of \$67,500. Notices of appeal were filed by the plaintiffs and by the Department of Justice as an intervener.

Thomas went to trial twice in earlier years; the first trial resulted in a jury verdict of \$222,000 and the second trial in a jury verdict of \$1.92 million. The court set aside the first verdict due to what it believed had been an erroneous instruction. The defendant moved to set aside the verdict in the second trial on the ground that it was unconstitutionally excessive or, in the alternative, sought an order requiring a new trial unless the plaintiff agreed to accept a lower award. The Department of Justice, with the assistance of the Copyright Office, had urged the court not to rule on the constitutionality of the award and argued that the range of statutory damages set by Congress is constitutional. In January, 2010, the district court granted the defendant’s motion for a new trial or remittitur of the \$1.92 million

award, concluding that that the highest award that the jury could reasonably have chosen was \$2,250 per recording—three times the statutory minimum award of statutory damages—for a total award of \$54,000. The court did not reach the constitutional issue.

- ***Vernor v. Autodesk, Inc.***, 621 F.3d 1102 (9th Cir. 2010); ***UMG Recordings, Inc. v. Augusto***, 558 F. Supp. 2d 1055 (C.D. Cal. 2008); and ***MDY Industries LLC v. Blizzard Entertainment, Inc.***, 616 F. Supp. 2d 958 (D. Ariz. 2009), all pending in the U.S. Court of Appeals for the Ninth Circuit during fiscal 2010, pertaining to whether the purchase and resale of copies of computer software, phonorecords, and videogames is permitted under the first sale doctrine (or, in the case of MDY, whether a purchaser of a videogame was the “owner” of the copy of the game for purposes of section 117 of title 17), notwithstanding license terms or legends that restricted the original purchaser’s right to resell copies. In *Vernor*, the court of appeals issued its ruling in Autodesk’s favor on September 10, 2010, concluding that when the terms of a software license provide that title in the copies remains with the seller, “significantly” limit the ability to transfer, and impose “notable” use restrictions, then the user is a licensee and not an owner, and the first sale doctrine does not apply. In *UMG*, the district court had held that promotional phonorecords distributed by a record company to music critics, radio disc jockeys, and others were subject to the first sale doctrine notwithstanding a statement on each phonorecord stating that it remained the property of the record company and that resale or transfer of possession was not allowed. In *MDY*, the district court held a purchaser of “game client” software that permits the playing of interactive online games is not the “owner of [that] copy of a computer program” under section 117, which permits such owners to, among other things, make copies of the computer program in a computer’s random access memory in order to operate the computer program, when the purchaser is subject to a license providing that ownership of the copy is retained by the software publisher and imposes restrictions on the transfer and use of the software. The appeals in *UMG* and *MDY* were still pending at the end of the fiscal year. During the pendency of these cases, the Copyright Office, along with the Antitrust Division of the Department of Justice, led an interagency inquiry into the legal and policy issues implicated in these cases. Representatives of other federal

government agencies with an interest in intellectual property also participated, and the group met with stakeholders and experts on the issue.

- *Yu Zhang v. Heineken N.V. et al.*, 2010 U.S. Dist. LEXIS 121084; 96 U.S.P.Q. 2d 1409 (C.D. Cal. 2010), a copyright infringement suit pertaining to the copyrightability of five visual designs, described as traditional Chinese paintings consisting of Kanji characters. The Register of Copyrights was named in the suit due to the Copyright Office’s refusal to register the plaintiff’s alleged copyrights. The district court granted the Register’s motion for summary judgment, finding that the Register’s determination that Zhang’s calligraphic works lacked originality was reasonable in light of the Office’s regulations and practices and relevant case law.
- *Live365, Inc. v. Copyright Royalty Board*, 698 F. Supp. 2d 25 (D.D.C. 2010), pertaining to whether the Librarian of Congress’s statutory authority to appoint Copyright Royalty Judges violates the “appointments clause” of the U.S. Constitution, article 2, section 2, clause 2. At the end of fiscal 2009, the district court refused the plaintiff’s motion for a preliminary injunction to stay a rate-setting proceeding of the Copyright Royalty Judges on the ground that their appointments were unconstitutional. In January 2010, the court issued a memorandum opinion explaining its ruling on the grounds that the plaintiff was unlikely to succeed on the merits of its constitutional challenges to the appointments of the judges and that a weighing of traditional equitable factors did not favor the plaintiff.

## FEDERAL REGISTER DOCUMENTS ISSUED

- Facilitating Access to Copyrighted Works for the Blind or Other Persons with Disabilities: Notice of Inquiry and Request for Comments (74 FR 52507, October 13, 2009)
- Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies: Interim Rule (74 FR 55138, October 27, 2009)
- Mandatory Deposit of Published Electronic Works Available Only Online: Interim Rule (75 FR 3863, January 25, 2010)

- Copyright Royalty Judges' Authority to Subpoena a Nonparticipant to Appear and Give Testimony or to Produce and Permit Inspection of Documents or Tangible Things: Final Order (75 FR 13306, March 19, 2010)
- Gap in Termination Provisions: Request for Comments (75 FR 15390, March 29, 2010)
- Section 111 and Interest Payments: Final Rule (75 FR 20526, April 20, 2010)
- Gap in Termination Provisions: Inquiry (75 FR 27248 May 4, 2010)
- The Register of Copyrights and the Copyright Royalty Judges to Determine the Constitutionality of Section 114(f)(5) of Title 17: Final Order (75 FR 26278, May 11, 2010)
- Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies: Final Rule (75 FR 43825, July 27, 2010)
- Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies; Final Rule: Correction (75 FR 47464, August 6, 2010)
- Waiver of Statement of Account Filing Deadline for the 2010/1 Periods: Extension of Cable Statement of Account Filing Deadline (75 FR 52267, August 25, 2010)
- Implementation of the Satellite Television Extension and Localism Act of 2010: Interim Rule (75 FR 56868, September 17, 2010).

## Registrations, 1790–2010

<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>
1790–1869	150,000 <sup>1</sup>	1905	114,747	1941	180,647	1976	108,762 <sup>2</sup>
1870	5,600	1906	118,799	1942	182,232	1977	452,702
1871	12,688	1907	124,814	1943	160,789	1978	331,942
1872	14,164	1908	120,657	1944	169,269	1979	429,004
1873	15,352	1909	121,141	1945	178,848	1980	464,743
1874	16,283	1910	109,309	1946	202,144	1981	471,178
1875	16,194	1911	115,955	1947	230,215	1982	468,149
1876	15,392	1912	121,824	1948	238,121	1983	488,256
1877	16,082	1913	120,413	1949	201,190	1984	502,628
1878	16,290	1914	124,213	1950	210,564	1985	540,081 <sup>3</sup>
1879	18,528	1915	116,276	1951	200,354	1986	561,208 <sup>3</sup>
1880	20,993	1916	117,202	1952	203,705	1987	582,239 <sup>3</sup>
1881	21,256	1917	112,561	1953	218,506	1988	565,801
1882	23,141	1918	107,436	1954	222,665	1989	619,543 <sup>4</sup>
1883	25,892	1919	113,771	1955	224,732	1990	643,602
1884	27,727	1920	127,342	1956	224,908	1991	663,684
1885	28,748	1921	136,765	1957	225,807	1992	606,253
1886	31,638	1922	140,734	1958	238,935	1993	604,894
1887	35,467	1923	151,087	1959	241,735	1994	530,332
1888	38,907	1924	164,710	1960	243,926	1995	609,195
1889	41,297	1925	167,863	1961	247,014	1996	550,422
1890	43,098	1926	180,179	1962	254,776	1997	569,226
1891	49,197	1927	186,856	1963	264,845	1998	558,645
1892	54,741	1928	196,715	1964	278,987	1999	594,501
1893	58,957	1929	164,666	1965	293,617	2000	515,612
1894	62,764	1930	175,125	1966	286,866	2001	601,659
1895	67,578	1931	167,107	1967	294,406	2002	521,041
1896	72,482	1932	153,710	1968	303,451	2003	534,122
1897	75,035	1933	139,361	1969	301,258	2004	661,469
1898	75,634	1934	141,217	1970	316,466	2005	531,720
1899	81,416	1935	144,439	1971	329,696	2006	520,906
1900	95,573	1936	159,268	1972	344,574	2007	526,378
1901	93,299	1937	156,930	1973	353,648	2008	232,907 <sup>5</sup>
1902	93,891	1938	168,663	1974	372,832	2009	382,086
1903	99,122	1939	175,450	1975	401,274	2010	636,527
1904	104,431	1940	179,467	1976	410,969 <sup>2</sup>	<b>Total</b>	<b>33,654,490</b>

<sup>1</sup> Estimated registrations made in the offices of the clerks of the district courts (Source: Pamphlet entitled *Records in the Copyright Office Deposited by the United States District Courts Covering the Period 1790–1870*, by Martin A. Roberts, Chief Assistant Librarian, Library of Congress, 1939).

<sup>2</sup> Registrations made July 1, 1976, through September 30, 1976, reported separately owing to the statutory change making the fiscal years run from October 1 through September 30 instead of July 1 through June 30.

<sup>3</sup> The totals for 1985–87 were corrected as of the fiscal 2004 annual report to include mask works registrations.

<sup>4</sup> The total for 1989 was corrected as of the fiscal 2004 annual report to be consistent with the fiscal 1989 table “Number of Registrations by Subject Matter.”

<sup>5</sup> Implementation of reengineering resulted in a larger than normal number of claims in process, temporarily reducing the total claims completed and registered.

## Number of Registrations by Subject Matter, Fiscal 2010

<i>Category of Material</i>	<i>Published</i>	<i>Unpublished</i>	<i>Total</i>
Nondramatic literary works:			
<i>Monographs and computer-related works</i>	182,046	65,093	247,139
<i>Serials:</i>			
Serials (nongroup)	79,757	–	79,757
Group daily newspapers	2,082	–	2,082
Group serials	7,391	–	7,391
<b>Total Literary Works</b>	<b>271,276</b>	<b>65,093</b>	<b>336,369</b>
<hr/>			
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	53,463	71,041	124,504
Works of the visual arts, including two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works, commercial prints and labels, and works of applied arts	55,592	41,589	97,181
Sound recordings	24,526	53,421	77,947
<b>Total Basic Registrations</b>	<b>404,857</b>	<b>231,144</b>	<b>636,001</b>
<hr/>			
Renewals			119
Mask work registrations			346
Vessel hull design registrations			61
<hr/>			
<b>Grand Total All Registrations</b>			<b>636,527</b>
Preregistrations			1,142
<b>Documents Recorded</b>			<b>8,985</b>

Financial information published in this table is unaudited.

## Fee Receipts and Interest, Fiscal 2010

<i>Fees</i>	<i>Receipts Recorded<sup>1</sup></i>
Copyright registration	21,629,966
Mask works registration	\$33,285
Vessel hull design registration	\$4,265
Renewal registration	\$27,810
<b>Subtotal</b>	<b>\$21,695,326</b>
<hr/>	
Recordation of documents	\$2,564,970
Certifications	\$277,818
Searches	\$97,759
Special handling/expedited services	\$1,798,190
Preregistrations	\$137,770
Other services	\$887,500
<b>Subtotal</b>	<b>\$5,764,007</b>
<hr/>	
<b>Total Receipts Recorded</b>	<b>\$27,459,332</b>
<hr/>	
Fee Receipts Applied to the Appropriation	\$27,793,006
Interest Earned on Deposit Accounts	\$5,640
<b>Fee Receipts and Interest Applied to the Appropriation<sup>2</sup></b>	<b>\$27,798,706</b>

<sup>1</sup> "Receipts Recorded" are fee receipts entered into the Copyright Office's in-process system.

<sup>2</sup> "Fee Receipts and Interest Applied to the Appropriation" are income from fees and deposit account interest that were fully cleared for deposit to the Copyright Office appropriation account within the fiscal year. The amount of Fee Receipts Applied to the Appropriation during the fiscal year does not equal the Total Receipts Recorded, because some receipts recorded at the end of a year are applied in the next fiscal year.

## Estimated Value of Materials Transferred to the Library of Congress, Fiscal 2010<sup>1</sup>

	<i>Registered works transferred to other Library departments</i>	<i>Non-registered works transferred to other Library departments</i>	<i>Total works transferred to other Library departments</i>	<i>Average Unit Price</i>	<i>Total value of works transferred to other Library departments</i>
<b>Books<sup>2</sup></b>	<b>261,220</b>	<b>94,709</b>	<b>355,929</b>		<b>\$15,155,061</b>
Hardbound	92,986	15,615	108,601	\$83.71	\$9,090,990
Softbound	150,351	14,438	164,789	\$34.51	\$5,686,868
eBooks (ProQuest)	17,883	64,656	82,539	\$4.57	\$377,203
<b>Serials<sup>3</sup></b>	<b>162,423</b>	<b>223,895</b>	<b>386,318</b>		<b>\$10,758,692</b>
Periodicals <sup>4</sup>	162,224	221,015	383,239	\$46.78	\$10,756,752
Newspapers	199	2,880	3,079	\$1.05	\$1,940
<b>Microforms</b>	<b>2,102</b>	<b>3,670</b>	<b>5,772</b>		<b>\$757,073</b>
Microfilm	2,102	3,670	5,758	\$131.47	\$757,004
Microfiche	14	0	14	\$4.92	\$69
<b>Motion pictures</b>	<b>13,800</b>	<b>1</b>	<b>13,801</b>		<b>\$4,742,823</b>
Film–35mm/70mm/IMAX®	303	0	303	\$11,231.00	\$3,402,993
Film–16mm	3	0	3	\$1,500.00	\$4,500
Videotape	13,494	1	13,495	\$98.95	\$1,335,330
<b>CD/DVDs</b>	<b>45,058</b>	<b>1,095</b>	<b>46,153</b>	<b>\$25.00</b>	<b>\$1,153,825</b>
<b>Printed music</b>	<b>4,240</b>	<b>909</b>	<b>5,149</b>	<b>\$53.05</b>	<b>\$273,154</b>
<b>Maps</b>	<b>822</b>	<b>18</b>	<b>840</b>	<b>\$41.59</b>	<b>\$34,936</b>
<b>Prints, pictures, and works of art</b>	<b>281</b>	<b>0</b>	<b>281</b>	<b>\$33.72</b>	<b>\$9,475</b>
<b>Total</b>	<b>489,946</b>	<b>324,297</b>	<b>814,243</b>		<b>\$32,885,039</b>

1 With 2010, categories have been changed to match format codes in the Copyright Office's eCO system. Newspapers and Film-35mm/70mm/IMAX® show substantially fewer works than in previous years where an arithmetical calculation was used. Books and serials show an increase, partly due to counting published "Dramas" under "Books", as well as increased productivity during fiscal 2010.

1 60 percent of "Books" are selected for the collections; 40 percent are used for the Library's exchange program.

2 60 percent of "Serials" are selected for the collections, except in the case of "Microfilm Newspapers" (100 percent of which are selected).

3 The figure for nonregistered "Periodicals" includes (1) an estimate based on average loads in hampers delivered to Library processing and custodial divisions and (2) a count of serials issues checked in through the Copyright Acquisitions Division. For the estimated portion, there was an earlier change in physical method of delivery, which decreased the average amount per hamper. The figures above reflect a reasonable estimate of current receipts per hamper and will be reviewed on a regular basis.



## Nonfee Information Services to Public, Fiscal 2010

### Information and Records Division Direct Reference Services

In person	12,959
By correspondence	32,608
By email	48,029
By telephone	131,080

**Total** **224,676**

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### Office of the General Counsel Direct Reference Services

By correspondence	1,955
By telephone	1,878

**Total** **3,833**

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### Receipt Analysis and Control Division Services

By correspondence	6,022
By email	13,792
By telephone	23,538

**Total** **29,560**

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### Licensing Division Direct Reference Services<sup>1</sup>

By correspondence or email	286
By telephone	2,964

**Total** **3,250**

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### Acquisition Division Direct Reference Services

By correspondence or email	10
By telephone	175

**Total** **185**

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### eCO Service Help Desk

By email	19,285
By telephone	38,347

**Total** **57,632**

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**Grand Total Direct Reference Services** **315,886**

<sup>1</sup> As of fiscal 2005, the Licensing Division figures do not include correspondence and telephone contacts initiated by licensing examiners.

Financial information published in this table is unaudited.

## Financial Statement of Royalty Fees for Compulsory Licenses for Secondary Transmission by Cable Systems for Calendar Year 2009

Royalty fees deposited	\$178,206,748.87
Interest income	\$4,127,119.31
Gain on matured securities	\$33,723.48
Copyright Royalty Judges' filing fees	\$1,200.00
<b>Total</b>	<b>\$182,370,034.66</b>

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Less:	
Licensing operating costs	\$3,490,809.52
Refunds issued	\$181,182.85
Cost of investments	174,632,360.40
Cost of initial investments	\$3,698,588.42
Copyright Royalty Judges' operating costs	\$173,470.00
Transfers out	\$138,608.18
<b>Total</b>	<b>\$182,315,019.37</b>

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Balance as of September 30, 2009	\$55,015.29
<b>Plus:</b> Face amount of securities due	\$174,645,425.72
Less: Pending refunds	\$82,625.10
Less: Pending transfers out	\$3,229.30

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<b>Cable Royalty Fees for Calendar Year 2009 Available for Distribution by the Library of Congress</b>	<b>\$174,614,586.61</b>
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*Financial information published in this table is unaudited.*

### Financial Statement of Royalty Fees for Statutory Obligations for Distribution of Digital Audio Recording Equipment and Media for Calendar Year 2009

Royalty fees deposited	\$761,532.34
Interest income	\$4,596.16
Gain on matured securities	\$421.36
<b>Total</b>	<b>\$766,549.86</b>

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Less:	
Licensing operating costs	\$136,028.55
Cost of investments	\$607,142.07
Cost of initial investments	\$4,074.61
CRJ operating costs	\$2,730.00
Distribution of fees	\$16,564.63
<b>Total</b>	<b>\$766,539.86</b>

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Balance as of September 30, 2010	\$10.00
<b>Plus:</b> Face amount of securities due	\$607,272.80

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<b>Audio Home Recording Act Royalty Fees for Calendar Year 2009 Available for Distribution by the Library of Congress</b>	<b>\$607,282.80</b>
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Financial information published in this table is unaudited.

### Financial Statement of Royalty Fees for Statutory Licenses for Secondary Transmission by Satellite Carriers for Calendar Year 2009

Royalty fees deposited	\$92,303,240.64
Interest income	\$2,274,465.37
Gain on matured securities	\$20,672.25
<b>Total</b>	<b>\$94,598,378.26</b>

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Less:	
Licensing operating costs	\$138,136.93
Cost of investments	\$92,453,215.19
Cost of initial investments	\$2,007,016.14
<b>Total</b>	<b>\$94,598,368.26</b>

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Balance as of September 30, 2009	\$10.00
<b>Plus:</b> Face amount of securities due	\$92,460,843.21

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<b>Satellite Carrier Royalty Fees for Calendar Year 2009 Available for Distribution by the Library of Congress</b>	<b>\$92,460,853.21</b>
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## COPYRIGHT OFFICE CONTACT INFORMATION

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Library of Congress  
Copyright Office–COPUBS  
101 Independence Avenue, SE  
Washington, D.C. 20559

Website · [www.copyright.gov](http://www.copyright.gov)

Public Information Office · (202) 707-3000 or 1-877-476-0778 (toll free)

Staff members are on duty to answer questions by phone from 8:30 AM to 5:00 PM, eastern time, Monday through Friday, except federal holidays. Recorded information is available 24 hours a day.

Forms and Publications · (202) 707-9100 or 1-877-476-0778

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